

Testimony of Erin Farris-Olsen
Montana Smart Growth Coalition
January 13, 2015, House Committee on Local Government

Thank you Mr. Chairman and members of the Committee,

My name is Erin Farris-Olsen and I am here representing the Montana Smart Growth Coalition.

The Montana Smart Growth Coalition is a network of organizations and individuals from across Montana that advocate for effective policies regarding land use, transportation, housing, sustainable agriculture, and the environment.

Under the Subdivision and Platting Act, codified in Title 76, Chapter 3, parts 1-6, of the MCA, local governments are charged with reviewing applications to new residential and commercial lots.¹ As part of the review and approval of new lots, local governments develop regulations that must consider, among other things: streets and roads public utilities, fire protection, storm water drainage, drinking water and wastewater treatment, water rights, and wildlife. Examining the proposed "use" of a lot is integral to the Platting Act and critical in the review of a subdivision application.²

¹ See 76-3-501, MCA "The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas;
- (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3) the dedication of land for roadways and for public utility easements;
- (4) the improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- (8) the avoidance or minimization of congestion; and
- (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services."

² See 76-3-504, M.C.A., for a list of subdivision regulation contents.

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Based on the proposed “use,” conditions may be imposed for project approval to ensure public health and safety and to ensure the efficient use and development of lots.³ Conditions may address streets or roads, fire protection, police, solid waste, noxious weeds, adequate drinking water and wastewater treatment, natural hazards, and other public health and safety issues.

HB 182 removes “use” from local government consideration in the absence of zoning or a growth plan. Because most counties in Montana do not have zoning, HB 182 would result in many local governments trying to review subdivisions in a vacuum without fully understanding the impacts they will create despite statutory direction and the practice of doing so.

Due to the lack of zoning, the Subdivision and Platting Act is the primary mechanism for local governments to determine the long-term pattern of land development and how services and infrastructure are provided. Because lot “use” is the linchpin for subdivision review, without this consideration, local

³ 76-3-608 (3)-(5), M.C.A: (3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509 or in 76-3-609(2) or (4), the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities;

and (d) the provision of legal and physical access to each parcel within the proposed subdivision and the

required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

governments would not have sufficient opportunity to ensure safe and economical residential and commercial development.

The "use" of any particular lot would result in significantly different conditions for subdivision approval. For example, the impacts created by a single family home differ greatly than that of a gas station, and thus would require different conditions and mitigation for traffic and fire protection services.

Platting Act provisions that necessitate the consideration of "use" would be specifically undermined by HB 182. Provisions undermined include most of the guidelines for application review, mitigation measures, and environmental review. A more comprehensive list of provisions that would be undermined by HB 182 has been submitted along with my written testimony.⁴ Simply removing the consideration of "use" from 76-3-604, M.C.A. will result in substantial confusion because fulfillments of most of the Platting Act provisions rely on the proposed "use" of the subdivision.

If viewed in a vacuum, that is, if every county in Montana had been zoned, or would be in the near future, the result of HB 182 would be less significant. However, the reality is that zoning is not likely to be implemented in the near future for most Montana counties. Thus, HB 182 removes the primary mechanism local governments have to ensure basic health and safety of citizens and efficient land development. For these reasons, Montana Smart Growth Coalition opposes HB 182 in its entirety.

Thank you.

⁴ 76-3-201, M.C.A. (outlines certain divisions that are eligible for exemption from the Act based on proposed use); 76-3-205(1), M.C.A. (covers exceptions to lots proposed for aircraft related purposes); 76-3-207(1)(c), M.C.A. (provides specifics for proposed agricultural use); 76-3-504(1)(s), M.C.A. (provides specific conditions for recreational camping facilities); 76-3-509(2)(c), M.C.A. (covers open space requirements for subdivision developments); 76-3-510, M.C.A. (covers the costs for extension of capital after subdivision development); 76-3-603(b), M.C.A. (covers a description of impacts analyzed depending on plat use); 76-3-103, M.C.A. (definitions within the Act are specific to the proposed use of a new lot); 76-3-510, M.C.A. (requires subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision).